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BATTLEDORE AND SHUTTLECOCK IN A GAME OF JURISDICTION.

A beautiful occasion with "a fine sword-light" in technicality arises out of a recent statute by the General Assembly of Missouri taking away the territorial jurisdiction of one, and adding it to that of another, of that state's Courts of Appeals. And its passing away is not yet.

To state the matter more concretely, this statute took away from the territorial jurisdicion of St. Louis Court of Appeals, Pemiscot County, and put it into that of Springfield Court of Appeals. Upon the day after this statute went into effect the former court transferred to the latter a case appealed to the former and there pending and unsubmitted. To be more correct, we should say it entered what purported to be an order of transference, for whether it really transferred such cause or not is something in the way of surplusage in the record of the kaleidoscope in the case.

Cap-a-pie the Springfield court presents a parry to the St. Louis thrust, and the cause bounds back towards, but supposably not into, the St. Louis court, and we might say it became a sort of wandering Ulysses, but not so wise as he, because he knew, without *aliunde* aid, where his home was when he saw it. Mott Store Co. v. St. Louis & S. F. R. Co., 158 S. W. 106; S. C. id. 108.

Our grimly humorous friend, technicality, rises just here to say that though the Springfield Court of Appeals says its confrere had no leave, license, authority or jurisdiction to send its domiciled visitor away, yet it appeared *intra muros* sufficiently for cognizance of its presence to be taken, because it orders "that this cause and all files and papers pertaining thereto be and the same are transferred to the St. Louis Court of Appeals."

Our grimly humorous friend aforesaid, also notes the fact that the Springfield Court of Appeals says that: "As our opinion is in conflict with the opinion of the St. Louis Court of Appeals in this same cause, it is ordered that the cause be certified to the Supreme Court for final determination as to the jurisdiction of this court to hear and determine the same," when at the same time it contends that the cause is not in its presence at all.

As we understand the Missouri system no question can be certified to the Supreme Court, as to which there is conflict of decision between two Missouri Courts of Appeals, unless both courts have jurisdiction to decide. If Springfield Court of Appeals is right in saying that the other court had no question before it of transfer at all, then its order was *brutum fulmen* and the remedy of appellant was by mandamus to compel determination of said cause by St. Louis Court of Appeals.

Of course, a court has jurisdiction to decide a plea to its jurisdiction, but has any court without jurisdiction of a cause any right to remove that cause to some other court over which it has no superintending authority or control?

The Springfield Court of Appeals would have nothing to do with mere refusal by St. Louis Court of Appeals to proceed to determine a cause and the fact of a non-jurisdictional appendix to such a refusal equally must be ignored.

One court said the statute removed the cause automatically; the other said there was only jurisdiction in the court to which the cause had been properly appealed to hear and determine it, because the statute never divested it of that jurisdiction. Conversely, the former court says, or must be presumed to say, that the latter court has authority to do but a single thing—accept or reject jurisdiction. If it rejects jurisdiction, appellant has his remedy by mandamus. If so, where does certification of difference of opinion come in? Appellant has one sure sort of remedy and that is to com-

pel one or the other of these courts to hear his case under mandate that he must apply for. If the case is out of St. Louis Court of Appeals, it can give him no appeal nor do any certifying to have its view settled. If the case never got into the Springfield Court of Appeals, it is as impotent to certify any ruling to the Supreme Court as is the other court.

Let us make this a little plainer. One court says the statute by proper construction meant that it should transfer this cause. The other court says it gave the first court no such power and therefore the cause has not been transferred. Where the Springfield Court is radically wrong in our opinion is in supposing that the purpose of the right or duty to certify is for anything else than maintaining harmony in judicial decision by invoking the superintendence of the Supreme Court. Certainly it was not to take away the right of a litigant to compel any inferior court to hear his cause and, if he has that right, it ought to be deemed his exclusive remedy. A court may not donate a remedy, and this the Springfield Court of Appeals, seemingly of its own volition, attempts to do.

NOTES OF IMPORTANT DECISIONS

EXEMPTIONS — PENAL STATUTE AGAINST CREDITOR ASSIGNING TO EVADE STATUTE.—In Markley v. Murphy, 102 N. E. 376, decided by Indiana Supreme Court, there is considered and upheld as constitutional a statute, which provides under penalty of fine that "whoever, either directly or indirectly, assigns or transfers any claim for debt against a citizen of Indiana for the purpose of having the same collected by proceedings in attachment * * * out of the wages or personal earnings of the debtors, in courts outside of the state of Indiana, when the creditor, debtor, person or corporation owing the money intended to be reached * * * are each and all within the jurisdiction of the state of Indiana."

The court points out that in Ohio such a statute was upheld in Hinds v. Sells, 63 Ohio St. 328, 58 N. E. 800, the court there saying that: "The purpose of this section is to protect our citizens in their rights relating to homesteads and exemptions and as the statutes on that subject are constitutional, any statute which is reasonably in aid of the right must also be constitutional, unless it should conflict with some other part of the constitution. The section in question only prevents our own citizens from resorting to a sharp trick or practice in another state to defeat the provisions of our exemption laws and the General Assembly has full power to so protect our citizens."

It ought to be true that a state has the right to prevent its own subjects doing acts on its soil violative of its policy, and, so if any other happens to be within the state at the time of the commission of the forbidden act. It hardly may be said, however, that the law does not leave a large loophole for escape from its provisions merely by stepping across a state line and there assigning such claim of debt, whether one goes to the other state for such purpose or there conceives and puts into execution his intent. Refinedly it might be argued that assignment has no effect until it is acccepted in another state and one is not to be punished for an act without any effect save in another state. There must be an overt act to constitute crime, and its occurrence creates venue.

NEGOTIABLE INSTRUMENTS—GARNISHMENT OF BANK UPON WHICH UNPRESENTED CHECK HAS BEEN DRAWN.—The Nebraska Negotiable Instruments Law, Sec. 188, provides that: "A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check." Application of this provision was denied in a case decided by Supreme Court of Nebraska, where after a check had been drawn, drawee bank was garnisheed in a suit against drawer. Farrington v. F. E. Fleming Com. Co., 142 N. W. 297.

It appears that a Missouri bank cashed a check, for a commission company doing business in that state, drawn on its deposit account in a Nebraska bank, and intervened in the suit for the amount of the check, the lower court holding against the intervener.

In reversing this ruling the Nebraska court, first holding in opposition to cases which rule that there is merely the relation of debtor and creditor between banks and depositor with no property of depositor in funds to his credit, then says: "If the effect of the Negoti-

able Instruments Act is to adopt the rule that no action against the deposit bank can be maintained upon the check by the holder 'unless and until it accepts or certifies the check,' which is not necessary now to decide, still that section is not applicable to the facts in this case. The plaintiff is not claiming under the Negotiable Instruments Act. The effect of service upon the garnishee is to impound the funds in the hands of the garnishee. The bank holding the deposit is not directly interested in this litigation. Its duty as garnishee is to pay the money to the party having the better right to it as determined by the court. The commission company had money on general deposit in the garnishee bank and procured that money from the (Missouri) bank by drawing its check against that deposit in favor of the (Missouri) bank. The (Missouri) bank clearly has a better right to the deposit than the commission company has and this plaintiff by garnishment could obtain no better right than her debtor had."

The statement of fact here seems confusing. There is nothing in the report showing that "that" money on deposit in the Nebraska bank was obtained from the Missouri bank, but rather it appears that the commission company already had a balance to meet the check when it was drawn but it was impounded by the garnishment. The Missouri bank, therefore, stands in no different position from any other check holder, and if there were two of them the payment of the junior check by the bank before the order is presented would acquit the bank.

It is true there is authority for the last clause of the above excerpt, and the real question in states holding as Nebraska does is whether Negotiable Instruments Law is as narrow as the court decides. In other words, does the law merely intend to state a situation between a bank and its depositor, or does it additionally mean that the giving of the check has no effect whatever as regards a depositor's account, that is to say,, statutorily create the situation in Nebraska which decision holds not to exist otherwise? It seems to us that the framers of Negotiable Instruments Law intended the conflict which the Nebraska court points out was to be allayed. The uniform status of a check was aimed at, and this is prevented by this ruling. This decision seems out of line with the spirit in which other courts are acting with regard to the Negotiable Instruments Law.

REFORMING PROCEDURE—THE GREAT PROGRAM OF THE AMERICAN BAR ASSOCIATION.

The address delivered by Hon. Thos. W. Shelton, Chairman of the Committee on Uniform Judicial Procedure, in calling to order the "Conference of Judges" at Montreal, August 30, 1913, was one of those occurrences that mark the progress of events.

The Conference of Judges was composed of the forty-eight Chief Justices of the States, the Chief Justice of the Court of Appeals of the District of Columbia, the nine presiding Judges of the nine Federal Circuit Courts of Appeals, the Chief Justice of the Court of Appeals of the District of Columbia, a Federal Judge from Hawaii and the Chief Justice of Porto Rico. It was the first Conference of Judges ever held in the history of the United States. The object is to bring about uniformity in judicial procedure amongst the States through fixed interstate judicial relations just as there is now fixed interstate commercial relations. The Conference met with the Committee on Uniform Judicial Procedure of the American Bar Association, of which Mr. Shelton is Chairman.

Mr. Shelton spoke as follows:

It will be left to another to convey to you suitable expressions of appreciation for the interest manifested by your presence here this evening in the organized endeavor to simplify, cheapen, and expedite judicial procedure. Yet, I beg that you will permit me to say that not only the Committee whom you have kindly come to help and the American Bar Association but the people of this country will gratefully remember and reward for the wholesome and unselfish effort to inspire and maintain faith in the most important of governmental relations.

Appellate Courts Should Prepare and Improve all Procedure.—Under the policy of Congress and that of nearly all the States, the judge is bound hand and foot by an aggregation of archaic. inflexible, unre-

lated statutes defining his conduct, made piecemeal by the legislative branch of the government. These he is sworn to follow and obey, though injustice be done in his very presence. That is the result of exclusive legislative control over the detail machinery of the courts. As a result, the courts have been accused of incompetency and the lawyers of indifference and insincerity regarding a condition they did not create and are helpless and almost hopeless to alter. The concomitant of responsibility in any relation is the power and facility to properly perform the required duty. If the bench and bar are to be held responsible for the results of court procedure they should be allowed to prepare and gradually perfect that procedure, the legislative department retaining control over all jurisdictional and fundamental matters. Immediate alterations and reform would thereby be assured in response to the call of convenience or the demand of justice. I do not fear to restate it in the presence of these great jurists that the failure to promptly do away with admitted hardships arising out of the present system has done more to prejudice the people against courts and lawyers than any other juridical element. Ignorance on the part of laymen and the press had enabled helplessness to be mistaken for indifference and even for deliberate wrong. It is not to be reasonably assumed that Congress, seeing the evil consequences of present conditions, will fail to act favorably and promptly. Meanwhile, the patient acquiescence that has characterized the bench and bar has ceased to be a virtue and has become a public menace. Let the light be turned on that the responsibility may rest where it belongs and the people may seek relief where it alone may be found. But, apart from these personal considerations, the test of any permanent institution is its ability to adapt itself promptly to changing conditions. Necessary improvements, as well as the rules themselves, should not be dependent upon legislative time, whim or lack of information, but they should be promptly made by the highest appellate court as occasion arises. The application of these basic principles is necessary to the preservation of a balance between the three departments of government.

A Country-wide Call Answered.—Seeing these things and believing them, there has come about an awakening of the public conscience that has galvanized into life a sense of duty and organized determination, whose country-wide call has been heard and answered. The avidity with which the Bar Association's program has been accepted inspires a confidence that justifies optimism and faith in our citizenship. In the common love of country and the general welfare state lines have been wiped away as if by magic. With one impulse lawyers have sunk their personal difference and submitted the entire matter to the Federal Supreme Court as a well-qualified central power whose work they would accept and support. In an unanimous resolution they have called upon Congress to set the Supreme Court free.

The Conference of Judges.—Actuated by that same spirit the big, broad-minded men who have given their lives to the sacred duties of the judiciary, have stepped down from the bench in this hour of their country's need to give of the fullness of their experience and wisdom. And, thus, there has come about the first Conference of Judges ever held in the history of the United States. I am grateful to be living when it took ploce. As it is epochal so it is evidential. It symbolizes an unselfish love of country and a surrender of personal inclinations that will do more to solidify sentiment and reincarnate the old-time respect and veneration for the courts than any other agency. It will give new inspiration to the lawyers and will add dignity and importance to the campaign of this Committee, for its work is just beginning. It will be an argument in behalf of an intention and a determination that will satisfy the earnest and discredit the pessimist. It will give justification to Congress for speedy action. It means the end of seeking after

experiment and innovation and the beginning of the application of permanent principles. Already the most powerful commercial and civic organizations in this country are joining in the campaign. It is a sign of the beginning of a new and a notable era when laymen and lawyers and judges will work hand in hand for the perfection of the administration of justice. The loyalty of the great majority of the people once they are convinced of the good intention of government, is one of the most indestructible, comforting and dependable things next to religion. It is well for the people to continue in the campaign for this evidence of their faith is needed in order that there may be hushed the voice of the unthoughtful critic and the self-seeking opportunist. To the observant it had long since become quite apparent that unless judicial procedure was reformed by the bench and bar it would be attempted by persons more impatient than competent and possibly more selfish than patriotic.

Interstate Judicial Relations. — The thought is ventured that a fixed system of interstate judicial relations ought to be quite as possible and even less difficult than the present plan of interstate commerce relations. Instead of thousands of merchants, manufacturers and bankers and hundreds of railroads and other human endeavors creating difficult complications to solve, there would be forty-eight Supreme Appellate Courts and nine Federal Circuit Courts of Appeals to agree upon a given principle. Already there is a cardinal rule of interpretation that when a state adopts a statute, its court will follow the meaning given it by the highest court of the sister state first adopting it. True it is that, by fundamental law, there *must* be fixed interstate commercial relations. Equally true it is that by unselfish patriotism untarnished by pride, there *may* be fixed interstate judicial relations. After all, we are but a big family living upon a big farm subdivided by imaginary political lines. At heart we are one, a truth that would be promptly demonstrated in the presence of a common enemy or other peril! Why not in response to reason, if not necessity? We need a little more friendly gossiping by the judges over the back fences. This ought to be possible and practical in a country where the brains and brawn and money of the men of every state is commingled in a common effort of uplift, civic improvement and industrial advancement. What does New York or Montana or Texas mean to the lawyer protecting his client or the judge administering justice? Justice is the same the world over. Why should not the machinery for administering it be the same? Why follow the opinion of another court and not the machinery leading up to it?

No Excuse for Differing Procedure.— There is no more excuse for differing court procedure amongst the States than for the use of differing languages. It is antagonistic to comity, convenience and economy. It has no part in the principle of states rights. It is inimical to a close fraternal relation between the States and retards an even flow of commerce. I said a few years ago that never in all the world was there such solidarity of purpose, such fraternal co-operation and such unity of effort as exists to-day throughout this great, fruitful and prosperous country. Commercially and socially it is made one by transportation, telegraph, telephone and newspaper service and facilities. It depends the one section upon the labor, fruits and industries of another like, almost, the members of the human body itself. A living evidence is the adoption of uniform statutes concerning all common commercial matters. If the same law is acceptable to all the States, why is not the same procedure by which it is enforced as acceptable? And, if not, why cannot it be made so through a system, in the preparation of which all will have a part.

The Mt. Vernon Conference—An Analogous Incident.—And this brings to mind a picture of the past. History bears evidence that just such thoughts as these, concerning commerce, troubled the patriots

when governments were first established in this country. There is a striking analogy between interstate commercial relations of that day and interstate judicial relations of this day. There was intense pride of opinion and unprofitable conflict. There was no organized effort at any understanding and there was a total absence of mutal interest and common purpose. There was a vision but there was no faith to visualize it; no enthusiasm to incarnate it and no optimism to inspire. Each state went about its own way as if the others were hostile foreign countries or unworthy of association. Just at this phychological moment Virginia sent James Madison to meet and confer with a representative from Maryland. The old "Mother of States" wanted to talk it over and Maryland was willing. That was the historic "Mount Vernon Conference" held in 1785, out of which grew the Anapolis Convention. It was the very beginning of fixed interstate commerce relations. That modest conference sowed seed that fell in good ground and in due course there came forth a harvest that made this nation commercially, educationally, and religiously, the wonder and envy of the world. It has gone down to history, to live as long as the republic shall last. Am I hoping too much: is the vision born of the wish and not of conviction that the end of the work of the "Montreal Conference" is not to-day? It is for you, upon whose strong shoulders Fate has thrown this great responsibility, to perpetuate its name in history and to make an answer that what has been done with interstate commerce relations can be done with interstate judicial relations.

A. H. R.

HUSBAND AND WIFE—WIFE'S LOSS OF CONSORTIUM.

GAMBINO v. MANUFACTURERS' COAL & COKE CO.

St. Louis Court of Appeals. Missouri. June 24, 1913. Rehearing Denied July 5, 1913.

158 S. W. 77.

Where the husband was injured by his employer's negligence, and was incapacitated and rendered sick and debilitated for a period of several months, the wife had no right of action for loss of "consortium"—the loss of the society, companionship, aid and support of the husband during the time he was so incapacitated—since the tort involved was a wrong inflicted directly on the husband, to whom the cause of action accrued, and the loss of the wife was merely consequential, and did not amount to a violation of her "personal rights" under the married women's statutes.

NORTONI, J.: This is a suit for damages alleged to have accrued to plaintiff wife through the loss of companionship, comfort, and support of her husband, entailed as a result of the negligence of defendant. Plaintiff recovered, and defendant prosecutes the appeal.

Defendant, an incorporated company, owns and operates a coal mine, and plaintiff's husband was in its employ as a coal miner at the time of his injury. Joseph Gambino, plaintiff's husband, was injured in defendant's coal mine by a rock falling upon him from the roof over the neck of his room; that is, in a space which connects the miner's room or working place with the main entry of the mine. The rock which fell from the roof upon Gambino, it is said, was six feet in length, three feet wide and about three inches in thickness. He was caught under the edge of the rock, and suffered a broken leg and other injuries which incapacitated him from performing any kind of service, and rendered him sick and debilitated for a period of several months.

It appears that the neck of the miner's room where plaintiff's husband was injured, like the main entry of the mine, is in the care and keep of the defendant while the security of the room, or working place, of the miner is to be looked after by the miner himself. It is therefore conceded throughout the case that the obligation to exercise ordinary care with respect to the reasonable safety of the roof of the neck of the room from whence the rock fell rested upon the defendant. The evidence tends to prove that defendant was remiss in the matter of inspecting the roof of the neck of the room and securing it from the fall of rock and that plaintiff's husband was injured as a result of defendant's negligence thereabout.

(1, 2) The sole question for consideration relates to the right of recovery in the plaintiff wife as for consortium; that is for the loss of the society, companionship, and also the aid and support of her husband during the time he was so incapacitated. No case has been cited revealing such a recovery on the part of the wife to have been sustained where her deprivation of the society, companionship, aid, comfort, and support of her husband was occasioned through a mere negligent tort. Moreover, after considerable research, we have found none to that effect,

and the authorities seem with one accord to announce a contrary view; for it is said the entire loss is to be compensated in the husband's suit. No one can doubt that it is the general rule the husband may recover in his suit damages accrued through a negligent injury to his person for such loss as ensues on account of his diminished earning power and loss of wages. But be this as it may, the wife is entitled to the support of her husband, and prior decisions declare that she may recover in her own name from one who has wrongfully deprived her of such support as through an intentional tort. That she may recover under the married woman's statute in her suit for loss of the companionship, society, aid, comfort, and support of her husband of which she is deprived through an intentional tort, as by the alienation of his affections, is not open to question; this for the reason that such alienation of affections and the loss it entails involves a violation of her "personal rights.'" See Clow v. Chapman, 125 Mo. 101, 28 S. W. 328, 26 L. R. A. 412, 46 Am. St. Rep. 468; Nichols v. Nichols, 147 Mo. 387, 48 S. W. 947. It has been hertofore determined by this court that the wife may recover, too, for the loss of society, comfort, companionship, and the aid and support of her husband of which she is deprived by the willful act of a defendant who, by constant annoyance and threats, occasions his insanity. See Clark v. Hill, 69 Mo. App. 541. These judgments obviously proceed on the theory that the loss to be compensated results from the violation of the "personal rights" of the plaintiff wife, from whom the husband has been enticed or driven away through willful and intentional conduct on the part of defendant. In this view it is said the "personal rights" of the wife to have the companionship and support of her husband have been directly invaded, and therefore the tort involved is a wrong perpetrated upon her. The proposition is entirely sound in those cases involving the alienation of the affections of the husband, for it is certain there the husband would have no right of action as for a wrong perpetrated upon him, especially in view of the fact that he participated in the wrong upon his wife. But such may not be true as to the subject-matter involved in Clark v. Hill, supra, for there it would seem the husband, driven insane by the willful conduct of Hill in threatening violence, etc., would have a right of action therefor as well, for in such case the suffering of the insane husband, though purely mental, resulted from the malicious, inhuman, and oppressive conduct. See Hickey v. Welch, 91 Mo. App. 4. It is difficult to square the principle reflected in Clark v. Hill with the rule of decision which obtains in cases of the character of this one, but be that as it may, that case is not directly in point here, for it certainly does not involve a negligent tort; on the contrary that tort was intentional and malicious. However, the question is confused, and we are much embarrassed by the judgment in that case. The authorities with one accord deny the right of the wife to recover for the loss of the society, aid, comfort, and support of her husband, as in this case where he is but temporarily incapacitated through the negligence of another, on the ground, as we understand it, that the tort involved is a wrong inflicted directly on the husband, to whom the cause of action accrues, and that the loss of the wife sought to be compensated therein is merely consequential. In other words, it is reasoned that such loss of society and support does not amount to a violation of her "personal rights" under the married woman's statutes, but rather that the tort is against, and the injury to, her husband to whom alone compensation should be made; for her right derived through the marital relations with him is remote, and therefore not a subject for judicial consideration so long as he may enforce it. In this view the courts have denied the right of recovery of the wife for the loss of the society, comfort, and support of her husband in every case of this character with which we are acquainted. There is but one authority in this state on the question, and that is the recent decision of the Kansas City Court of Appeals, directly in point. See Stout v. Kansas City Terminal Ry. Co., 157 S. W. 1019, not yet officially reported. See, also, to the same effect Feneff v. N. Y. Cent. & H. River R. Co., 203 Mass. 278, 89 N. E. 436, 24 L. R. A. (N. S.) 1024, 133 Am. St. Rep. 291; Brown v. Kistleman (Ind.) 98 N. E. 631, 40 L. R. A. (N. S.) 236; Goldman v. Cohen, 30 Misc. Rep. 336, 63 N. Y. Supp. 459; 21 Cyc. 1530; 6 Thomp. Neg. § 7411. For a highly instructive discussion of the whole subject, though not directly in point as authority here, see Marri v. Stamford Street R. Co., 84 Conn. 9, 78 Atl. 582, 33 L. R. A. (N. S.) 1042, Ann. Cas. 1912B, 1120.

The judgment should be reversed. It is so ordered.

ALLEN, J., concurs.

REYNOLDS, P. J. (concurring). I concur entirely in the result reached by my Brother Nortoni but think that we should expressly

overrule so much of the decision of our court in Clark v. Hill, 69 Mo. App. 541, as holds that a like action can be maintained. That was an action by the wife for damages sustained in the loss of the support and association of the husband, it being alleged that he was driven insane by threats of violence made by defendant. Obviously, as pleaded and proven there, it was not a tort directed against the wife; not an intentional tort as against her, such as are cases of alienation of the affections of the husband and the like. Clark v. Hill rests, on this proposition, alone on the decision of our Supreme Court in Clow v. Chapman, 125 Mo. 101, 28 S. W. 328, 26 L. R. A. 412, 46 Am. St. Rep. 468. That was an action for the alienation of the affections of the husband, a tort against the husband as such. Judge Black squarely and unmistakably places the decision on the common law right of the husband to maintain an action for damages against a third person for enticing away his wife and depriving him of her society, and of the like right in the wife under our statute. Acknowledging that the common law gave the wife no corresponding right, he distinctly finds support for her action in such a case in the changed status of the wife which is brought about by our statute. I do not think that either on the facts or the principle involved, Clow v. Chapman furnishes any support for the holding of our court in Clark v. Hill on this point, and I think we should distinctly overrule that decision in so far as it holds that the kind of actions there and here involved can be maintained by the wife or the husband. Otherwise and on other points covered by that decision, it is a correct and very lucid statement of the law.

NOTE.—*Loss of Consortium of Either Spouse as Ground of Recovery for Negligent Injury.*—Upon the same day that the Missouri court decided the instant case, it also held that a husband was entitled to recover for loss of the wife's services. Bruce v. United Rys. Co., 158 S. W. 102. In Marri v. Stamford Street R. Co., 84 Conn. 9, 78 Atl. 582, 33 L. R. A. (N. S.) 1042, Ann. Cas. 1912 B, 1120, the position is taken, in effect, that, under statute emancipating the wife, she has been placed on the same plane as the husband, and, therefore, the old action at common law for "ill usage *per quod consortium amisit*" has become unsuited to our jurisprudence. As the instant case says, this case presents "a highly instructive discussion of the whole subject." The theory of recovery at common law was as expressed by Blackstone (1 Bl. Com. 442) that: "By marriage, the husband and wife are one person in the law; that is, the very being or legal existence of the woman is suspended during the marriage, or at least consolidated into that of the husband, under whose wing, protection and cover she performs everything." Then, speaking of injuries to husband and of those to wife, it is said: "We may observe that in these relative injuries notice is only taken of the wrong done to the superior of the persons related, by the breach or dissolution of either the relation itself, or at least the advantages accruing therefrom; while the loss of the inferior by such injuries is totally unregarded. One reason for which may be this: that the inferior has no kind of property in the company, care, or assistance of the superior, as the superior is held to have in those of the inferior, and therefore the inferior can suffer no loss or injury." 3 Bl. Com. 143.

However we may appreciate or fail to appreciate this kind of reasoning, or think it only may represent individual speculation, yet it must be admitted, that husband and wife were distinguished, because of their varying status in the marriage relation, and if the varying status disappears so also does the reason for distinction Then, it comes down to the question whether equality brings both to the status of the wife at common law or advances the latter to the common law status of the husband. The Connecticut court states the matter thus: "The question then remains whether the law shall say that both husband and wife are entitled to maintain an action for loss of consortium, when the other sustains at the hands of a third person personal injuries not accidental, resulting in physical impairment, or that neither can do so. As the result of the legal status created for those who come under the act of 1877 (enabling act) it seems clear that in an action to recover for personal injuries to a wife, compensation can be obtained for the resultant physical impairment and disability as fully and to the same extent as in an action by a husband where he is the person personally injured. This impairment and disability necessarily includes diminution or destruction of the capacity to serve or help in all practical ways, and the foundation of the husband's former recovery being essentially grounded, as we have seen it was, in the impairment of the wife's capacity for service and usefulness, it follows quite inevitably that the wife's recovery must be regarded as exclusive, except, of course, as to expenses which the husband may have been called upon to incur by reason of the wife's injury. The right to recover these rests upon a different basis."

In Massachusetts the view expressed by the Connecticut court seems almost, if not fully, adopted in later decision. The supreme court of this state had ruled: "That the unity and identity of interest, which by the common law existed between husband and wife have been impaired. * * * They are not, however, entirely done away with. The husband's right to compel his wife to work for him is abridged, but he still has a right to her society and assistance, which is different in character and degree from that which other people have, or which she is at liberty to give them." Kelley v. N. Y. N. H. & H. R. Co., 168 Mass. 308, 43 N. E. 1063, 38 L. R. A. 631, 60 Am. St. Rep. 397. But in Bolger v.

Boston El. R. Co., 205 Mass. 420, 91 N. E. 389, allusion was made to the case of Feneff v. N. Y. C. & H. R. R. Co., 203 Mass. 278, 98 N. E. 436, 24 L. R. A. (N. S.) 1024, where the wife's right to recover for *consortium* was denied, as follows: "We do not see why the case of Feneff v. New York & Hudson River Railroad, *supra*, is not decisive of this case (action by husband for loss of consortium). No valid distinction can be drawn between the husband's right to recover for the loss of the wife's *consortium*, in cases growing out of the negligence of a third party, and the wife's right to recover for loss of the husband's *consortium* in like cases. Neither can it make any difference that in the case of the wife the loss of *consortium* is, or may be the sole ground of recovery and in the case of the husband it is, or may be, one of several grounds of recovery." Thereupon a verdict for the husband was reduced from $2,500 to $750, so as to exclude all recovery for *consortium* and include the husband's expenses incurred in the care and attempted cure of his wife.

Statutory rights, however, have been more often held not to affect husband's right to recover for *consortium*. Thus it was said that the husband should not be deprived of this right unless explicitly so directed. Omaha & R. Valley R. Co., 41 Neb. 578, 59 N. W. 921; Mewhirter v. Hatten, 42 Iowa 288, 20 Am. Rep. 618, but in the former of these cases the *consortium* right seemed to be restricted from what it was at common law.

In Birmingham So. R. Co. v. Lintner, 141 Ala. 420, 38 So. 363, 109 Am. St. Rep. 40, it was thought the statute meant nothing more than to vest in the wife her earnings in services rendered to third persons. "It in no degree emancipates her from her household duties, nor authorizes her to enter upon such alien services as would conflict with and prevent the performance of her duties incident to the domestic establishment—the care, comfort and convenience of the family,—the duties, in short, which, before the statute, she owed to the husband, as husband and head of the family. These duties she owes now just as she did at the common law; and while the husband may pretermit them and engage wholly or to any less extent in outside services the earnings of which belong to her, without such emancipation by the husband, she owes these services to him as before." This states the matter strongly, but it hardly may be denied, that the common law status is somewhat changed, and permission of the husband need not be shown to enable the wife to recover for such services,—even refusal to so permit her would not be any defence on the part of one to whom the services were rendered. What she owes to the husband is precisely like what he owes to her and jointly to their offspring. Calling him head of the family is more euphonious than true.

Pennsylvania decision holding husband's right to recover for loss of wife's aid, etc., has not been affected by her rights under enabling acts. Hewitt v. Pa. R. Co., 228 Pa. 397, 77 Atl. 623. Of similar view is Caswell v. N. J. St. R. Co., 69 N. J. L. 226, 54 Atl. 565.

It is believed that Massachusetts' later view as expressed in the Bolger case, *supra*, and so forcefully reasoned out in the Marri case by the Connecticut case will gather new followers in decision. It ought to be that if anyone can recover full damages for injury, loss of earnings, etc., this is an end of the matter, and it seems quite apparent that if the theory of the common law no longer fits our conditions it ought not to be longer enforced. No such rule as we enforce could ever have obtained recognition at common law, if both parties to the marriage relation had been equal. C.

ITEMS OF PROFESSIONAL INTEREST.

SHOULD "REFORMING" PROCEDURE COMMENCE WITH "REFORMING" THE JUDGE?

Our good friend, Mr. Everett P. Wheeler, of New York, is chairman of the committee of the American Bar Association to suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation. He has been chairman of this committee since the memory of man runneth not to the contrary, yet we doubt if he ever received a letter of criticism so unique as that which was addressed to him at Montreal at the last meeting of the Association by Mr. Thomas H. Franklin, of San Antonio. Judge Franklin is a member of the firm of Denman, Franklin & McGown, one of the leading law firms of Texas and, for that matter, of the entire southwest.

Judge Franklin sends us a copy of his letter to Mr. Wheeler which makes such good reading that we pass it out to our readers, with the permission of Judge Franklin.

August 27th, 1913.

Honorable Everett P. Wheeler,
Chairman, Special Committee of American Bar Association to suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation.
Montreal, Canada.

Dear Sir:—

It is a far cry from San Antonio to Montreal and a still farther cry to your distinguished Committee from one who has spent the better portion of his life on the fringe of the frontier peddling out law from the hurricane deck of a bucking broncho and who has not yet gotten fully adjusted to the dignity of a roll top desk, a revolving chair and a "high-brow clientelle," and his mild, if not modest, views may not reach the inner consciousness of your Committee. But brothers, the spirit moveth me and I must speak. I have read and re-read your report to the American Bar Association and wish to say a word thereon.

If my language has more of the abruptness of the bucking broncho than the smoothness of the roll top desk, I apologize in advance, as the broncho has more to do with the bending of this twig than the desk. Since graduating up to the latter, I have learned to part my hair in the middle and wear tailor made clothes, but at times the restrictions of the present hurt and I unwittingly drop back into the habits of the past. Therefore, I again ask that you excuse linguistic lapses into the frontier vernacular.

The chief purpose of your report seems to me to be to remedy imperfections in Judges by improvements in practice and procedure. Don't you think it would be better to head the broncho the other way and secure the improvements in the administration of the law by educating the ministers of justice up to a proper comprehension of their duties?

Do you think that any learned chancellor would ever issue an injunction without notice, or a temporary restraining order except where necessary for the protection of rights invaded or seriously threatened with immediate invasion?

Why a statute then directing a chancellor not to do what he ought not to do and yet leaving to him the final determination of what he should or should not do? You say to him by statute he must not issue an injunction except upon notice nor a "temporary restraining order without notice to the opposite party, unless it shall appear * * * * that immediate and irreparable loss or damage will result to the applicant before the matter can be heard on notice." To the chancellor is, therefore, left the determination of the question whether the emergency is such to demand the issuance of an injunctive writ without notice.

How much farther along, therefore, have you gotten by passing the statute? Can you supply brains by statute or conscience by an act of the National Congress or State Legislature? It seems to one who has gotten his legal education during the short recesses between the bucks of a broncho, whose main talent ran to bucking, that rules of practice and procedure in the trial courts are framed upon the principle that by a faithful following of them the ends of justice could be best attained. If, however, it should clearly appear to an appellate court in any case that the ends of justice had been certainly reached by the trial court, but that some purely directory rule of practice or procedure had been technically violated, then upon what principle of common sense or justice should the just judgment of the lower court be reversed and the cause remanded for a new trial? Don't you think that the practice of reversing a case for such technical error originated in the mind of some judge who was mentally indolent and did not wish to hunt the record to determine whether the error had accomplished any harm in the trial of the case? That the baby born of such a parentage was immediately baptized by some other judge of like calibre as "Judicial Precedent" and thereafter grew into vigorous manhood under the careful nursing and feeding of bench and bar?

Since then dockets have become crowded, decisions have been repeatedly multiplied, delays in justice grown into practical denial of rights and the layman by bitter experience has discovered that this judge-made law is responsible for many of the tribulations he suffers when he seeks justice through the courts, and he is loudly clamoring the "Judicial Precedent" be bowled over and that a creature termed "Substantial Justice" shall be set up in his place. In response to the *vox populi*, the Bar seems to be turning its back on poor, old time-honored and court-worshipped, "Judicial Precedent" and is salaaming to the new favorite "Substantial Justice."

What you now propose is to say, by statute, to the Judges of the Appellate Courts: "You must not reverse any case unless it is made to affirmatively appear to you from the entire record that there was error committed by the trial court of such a nature that substantial justice was not reached in the judgment appealed from." It must logically follow, therefore, that the question of what is the substantial justice of a case is one for final determination by a court of last resort.

Now, of course, the only justification for the lodging of that power in an appellate judge instead of in a *nisi prius* magistrate is that the former is a fairer, more learned man and a better lawyer than the latter. This being true, why not abolish the appellate courts, make the decisions of the trial courts final and make trial judges of the big men that we now put on our appellate benches?

But I see an objection to that course. We haven't enough big men to go around. We couldn't get enough judges to preside in our trial courts. We would run short of material. Therefore, we should devise some plan for educating our trial judges until they are fully qualified to understand the meaning of substantial justice and wise enough to properly administer it. I suggest, therefore, that we establish a "National School of Juddicial Instruction" to sit at Washington nine months out of each year, to be

composed of the present members of the Supreme Court of the United States, vacancies to be filled by appointment by the President of the United States, and a "State School of Judicial Instruction" in each state to be composed of the present members of the court of last resort in each state, respectively, vacancies to be filled by the governor of the state, and that we abolish all appellate courts, national and state.

As soon as these schools are organized, federal trial Judges should be required to stand examinations in the National School and all state trial judges stand examination in their respective State Schools, physical, mental, moral, temperamental and spiritual; all those who fail at the examinations to be immediately removed from office and turned out to graze in the Mojave desert as punishment for holding a judicial position without a proper understanding of what the appellate courts understood to be substantial justice. Vacancies thus caused in federal judicial positions or occurring within three years thereafter to be filled only with lawyers who had first passed their examination in the National Schools and vacancies in state judgeships to be filled only by lawyers who had passed their examination in one of the State Schools. After the expiration of three years, all judicial positions to be filled only with lawyers who had taken a two years' course in one of the schools and graduated therefrom.

As some of the subjects of study and for examination in these schools, I suggest the following:

1. When does testimony amount to more than a scintilla of evidence and raise an issue to be submitted to a jury? And is the scintilla a scintilla if the trial court says it is, but is not a scintilla if the appellate court says it is not?

2. What is the proper part played in the administration of equity by the Chancellor's foot and what is the proper rule by which it should be measured? Does it furnish any better guide to the chancellor than his liver and if so, why?

3. The rule of reason, its origin, true application, proper comprehension, and ultimate extension and why courts should assume that a legislative body is a "reasonable creature in being."

4. Substantial Justice. The true meaning of the phrase with a full consideration of the question why a trial judge who is unfit to finally determine what is substantial justice, at once becomes fully qualified to do so, should he be elected or appointed to an appellate judgeship?

5. If the courts of the country have not been administering substantial justice in the past, what have they been doing and how can they be made to administer it in the future by legislative enactment?

6. Where the majority of a court holds a legislative act constitutional, have the minority judges rendering dissenting opinions holding it unconstitutional violated their oaths to support the constitution and the laws?

7. What is technical error? If a man is tried, convicted and sentenced to death for murder and the record shows that the trial judge peremptorily instructed the jury to convict the defendant and assess the death penalty, but also conclusively shows that the defendant was guilty of murder and should be hung, is the error of the court in so charging the jury, a technical one because substantial justice has been done in the case? If so, what becomes of the right of trial by jury—that palladium of our liberties we lawyers have talked about so often and with such vigor as to court frequent attacks of apoplexy? Can there be such a doctrine as that a man may be so guilty that he is not entitled to a fair and impartial trial?

8. Mob Law and Substantial Justice—noting carefully the difference between taking a man's life or property by mob violence and the depriving him of one or both without following the due forms and processes of the law of the land. In the one instance the mob determines what is substantial justice and in the other the determination is made by a few individuals who temporarily occupy judicial positions. Differentiate carefully.

9. Receiverships, their Cause and their Cure. This subject must be considered with special reference to carefully prepared statistics showing the number of instances in which receivers have been appointed to public service corporations to aid the latter to hinder and delay their creditors, and the number in which such appointments have been made to compel such corporations to perform their duties to the public. In considering this subject, special attention must be given to the "substantial justice" of the appointment in each instance.

10. Corporate Monopolies in Restraint of Trade. How many would there have been in the United States if the equity powers of the courts had been intelligently exerted to prevent or overthrow them?

11. Public Policy. The meaning of the term to be carefulily defined without the use of

language expressing the definition and to be provided with fire-escapes permitting of the rapid retreat of the definer when confronted with a case his definition did not fit.

Can one imagine any more pleasing and ennobling sight than the teachers of the National School instructing students therein! Think how gravely they will expound the law and how forcibly impress their auditors with its certainty by reading eloquent dissenting opinions rendered by some one of them when he was a judge; how accurately will they define technical error; how eloquently explain "substantial justice;" how clearly express the meaning of public policy, and how simple will seem the most abstruse question when elucidated by them. And when watered by the drippings from this Sanctuary, how productive of "substantial justice" will become the brains of the students offering for examination.

I trust that this communication will be received in the spirit of brotherly love in which it is written and that in its consideration the members of your committee will accord to the writer not only "substantial justice," but substantial charity, for he is only a meek and lowly marcher in the ranks of this Association, more ignorant than learned in the law, and, sitting at the feet of the wise, he asketh instruction.

Very truly yours,

THOMAS H. FRANKLIN.

San Antonio, Texas.

RECENT DECISIONS BY THE COMMITTEE OF PROFESSIONAL ETHICS OF THE NEW YORK COUNTY LAWYERS ASSOCIATION.

Question No. 31.—Is it proper professional conduct for a lawyer to repudiate an oral stipulation, by which he agreed, in return for a favor which has been granted and cannot be revoked, to admit on the trial of an action a certain fact in issue, which might, at the time, have been proved by the issuing of a commission but has since become difficult or impossible to prove? He contends that the promise was made without his client's express authority; that his client, learning of the promise during final preparation for trial, insisted upon its withdrawal; and that he must give his client the benefit of the court rule which makes oral stipulations unenforceable, just as it would be his duty to plead the statute of frauds in a case to which it applies.

Answer No. 31.—In the opinion of the committee: The repudiation of an oral stipulation is to be condemned. The committee regards such conduct as improper. It directs attention also to the following decisions holding the client to be estopped under such circumstances:

Mutual Life Ins. Co. of N. Y. vs. O'Donnell, 146 N. Y. 275, 280.

People vs. Stevens, 52 N. Y. 306, 310, 311.

Question No. 32.—Do you deem it improper professional conduct for a lawyer to advertise for business in the following form? You will note that he does not mention his profession.

"Avoid Litigation.—I act as adviser, arbitrator, adjudicator and special confidential agent to diplomatically adjust all difficulties and disputes for individuals, corporations or heirs. Bond given when matters of trust are placed with me. Bank references.....Appointment by phone:....."

Answer No. 32.—In the opinion of the committee, the advertisement referred to is improper, notwithstanding its opening words "Avoid litigation."

Question No. 33.—A gave Mrs. C an option on a piece of property. She threatened suit for the return of the option money. A called on his attorney, stated the facts to him, asking him to defend him in the suit should one be brought. The lawyer agreed to do this. No payment was made for retainer, and none asked as A was absolutely responsible financially and had had business relations with this attorney before under similar circumstances.

Subsequent to this, Mrs. C saw the junior partner of this law firm who commenced suit against A. A called on the junior partner and protested against his taking the case against him. The junior partner pleaded justification by saying that when he commenced suit he was ignorant of any arrangement between A and his partner, and further there was no payment for retainer.

First: Was the junior partner justified in taking the case against A?

Second: Could he withdraw from the suit and in case the suit went on, could the senior partner defend A, as per original agreement between himself and A?

Answer No. 33.—In the opinion of the committee, that if in ignorance of A's relationship with the senior member, the junior member took Mrs. C's case, there was nothing in his conduct justifying criticism: but upon discovery of the fact, each party was disqualified from acting for either of the parties in the controversy.

Question No. 34.—Does the committee regard the following as proper professional conduct:

One of a firm of lawyers formerly occupied judicial position, and while a judge he delivered an opinion. After his resumption of active practice the opinion is cited by opposing counsel as controlling and in conflict with a contention made by the former judge's firm. In its brief this firm inserts the following:

"It was a member of our firm who wrote the opinion cited against us. When this matter was recently brought to his attention he gave it as his view that the practice which we urge is proper, and the motion which we make is made with his express sanction."

Answer No. 34.—In the opinion of the committee the reference in the brief to the present "view" or opinion is improper. It is outside the scope of allowable argument.

Question No. 35.—A is a member of the bar assuming to represent a legatee under a will. He offers the will for probate at the request and procurement of the only child of the decedent, who has already to his knowledge, announced her determination to contest and defeat the probate. It appears by frank admission of A upon the first hearing that he will not take any active step in support of the probate and the duty devolves upon the persons named as executors. Upon the hearing before the surrogate on the contested issues A cooperates with the attorney for the contestant, advises with him and assists in the contest of the will propounded by him for his client.

Does not this constitute unprofessional conduct?

Answer No. 35.—In the opinion of the committee, that upon the facts as stated, A appears to have assumed inconsistent positions in offering the will for probate and then in cooperating in contesting its probate. In the absence of any further facts which might explain and possibly justify the apparent inconsistency, the committee would consider that the duty of A to his client, the legatee, should preclude him from acting as stated in the question.

BOOKS RECEIVED

A Treatise on the Law of Municipal Corporations, by Eugene McQuillin, author of Municipal Ordinances and Judges of the Eighth Judicial Circuit, Missouri. In six volumes. Volume V. Price $6.50 per volume, delivered. Chicago, Ill. Callaghan & Co. Review will follow.

The American Digest annotated key number series, Volume 15, continuing without omission or duplication the Century Edition of the American Digest, 1658 to 1896, and the Decennial Edition, 1897 to 1906. A digest of Current Decisions of the American Courts, as reported in the National Reporter System, the Official Reports, and elsewhere, from August 1, 1912, to January 31, 1913. And digested in the monthly advance sheets for September, 1912, to and including February, 1913 (Nos. 264-269). Prepared and edited by the Editorial Staff of the American Digest System. Price $4.00, St. Paul, Minn. West Publishing Co. Review will follow.

HUMOR OF THE LAW.

"I see an Illinois judge has fined himself for speeding."

"Well, that's no more than just."

"And suspended sentence."

"Well, that's no more than human."—Washington Herald.

An interesting and significant incident is told in the New York Sun by a member of a law firm who hired a Russian Jew as office boy. He was small, and obviously underfed, and his employer soon arranged that he should have at least one good meal a day in a near-by restaurant. Later he got lodgings for him in a better district than that in which he had grown up.

Within a year he was attending lectures at an evening law school. In the office, he did not wait to be told what to do. He did things. When he had a moment's leisure he "boned" law books.

Several prominent attorneys were discussing the peculiar and rather humorous questions put to witnesses by young attorneys entering upon their legal work, and one of the number vouched for the authenticity of this incident:

"I went up to the superior civil court one day to hear a young friend of mine try his first case. All his relatives and friends were there, and the novice wore a most serious expression as he started to question a witness. He did nicely until he asked the man:

"'Did you have a contract with the plaintiff?'

"'Yes,' replied the witness.

"'What kind of contract was it?'

"'An oral one,' replied the witness.

"'Will you please produce it?'

"The witness stood still staring at the attorney, and then looked at the judge, inquiringly. There was a ripple of laughter throughout the court room, but still the young attorney did not 'catch on,' and, looking toward the judge, remarked:

"'Your Honor, I ask you to give the witness until 2 o'clock to produce that contract.'

"The court could not longer withhold, and joined in the laughter. Then the young lawyer saw his mistake, and with reddened face also had a good laugh."—Case and Comment.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Abstracts of Title**—Damages.—An abstract company undertaking to make an abstract for real estate is liable to the person ordering the abstract for any mistake therein causing damage to such person.—Hillock v. Idaho Title & Trust Co., Idaho, 133 Pac. 119.

2. **Adverse Possession**—Continuous.—In trespass to try title, defendant relying on adverse possession could not recover where the possession had not been continuous and exclusive, and where the premises had not been fenced for the statutory period.—Purington v. Broughton, Tex., 158 S. W. 227.

3.——Continuous.—Where a widow, in possession with her daughters of land, owned jointly by her husband and his deceased brother, repudiated the interest of the brother's heirs, but removed from the land before the 10 years required by the statute of limitations, leaving the daughters in possession, the adverse possession was broken, in the absence of evidence showing that the daughters were holding for their mother or under a claim from her.—William v. Randall, Tex., 158 S. W. 253.

4.——Subordinate Title.—The occupation by any other person than the holder of the legal title is deemed subordinate to the legal title, and the burden is on such person to show that his occupancy is hostile.—Janke v. McMahon, Cal., 133 Pac. 21.

5. **Appearance**—Waiver of Service.—A defendant upon whom a summons had not been served did not waive service, where its attorneys asked plaintiff's attorneys for additional time to answer.—Klatte v. McKeand, S. C., 78 S. E. 712.

6. **Attachment** — Excessive Levy. — Where plaintiff in an action upon a note for $3,500 maliciously attached property of defendant amounting to over $100,000, defendant has a right of action for damages for the excessive levy.—Tuthill v. Sherman, S. D., 142 N. W. 257.

7. **Attorney and Client**—Authority.—An attorney who has obtained judgment for his client may control any fund realized therefrom to satisfy his lien for fees.—Lane v. Brison, Ga., 78 S. E. 725.

8.——Authority.—An attorney has authority to bind his client by an agreement not to take a change of venue, since that is a right affecting the remedy and not the cause of action.—Terre Haute Brewing Co. v. Ward, Ind., 102 N. E. 395.

9. **Bailment**—Conversion.—It is the duty of the bailee to use ordinary care to protect the property from injury and to return it as agreed upon, though a mere neglect to do so does not subject either a minor or an adult to a suit for conversion; but, where the bailee does any willful and positive act violating such duty or repudiating the contract to the injury of the property, the bailor has an action for damages.—Daugherty v. Reveal, Ind., 102 N. E. 381.

10. **Bankruptcy**—Act of.—Mere sufferance by a creditor of a bankrupt to enforce by execution a mortgage lien antedating by more than four months the filing of the bankruptcy petition, on which judgment had been recovered, does not constitue an act of bankruptcy.—In re Deer Creek Water & Water Power Co., U. S. D. C., 105 Fed. 205.

11.——Bar.—An adjudication and discharge in bankruptcy, pending an action against the bankrupt on a note which is duly scheduled in the bankruptcy proceedings, abates the action.—Fort-Mims & Haynes Co. v. Branan-Akers Co., Ga., 78 S. E. 721.

12.——Counsel Fees.—Where the property of a bankrupt was attached within four months before bankruptcy, it was error, as a condition to an order requiring a delivery of the property to the trustee, to require him to pay counsel fees to the attorney for the attaching creditor and costs of the attachment suit.—In re Shoemaker, C. C. A., 205 Fed. 113.

13.——Lease.—A provision in a coal mine lease, giving the lessor a lien to secure all amounts that might become due under the lease, did not extend to a claim for damages caused by the bankruptcy of the lessee and consequent abandonment of the lease.—In re Gallacher Coal Co., U. S. D. C., 205 Fed. 183.

14.——Preference.—A mortgage, executed by a bankrupt to a bank the day before bankruptcy proceedings were instituted, in pursuance of a former oral agreement to execute the same to secure advances to enable the bankrupt to purchase horses, held void as a preference.—Lathrop Bank of Lathrop, Mo., v. Holland, C. C. A., 205 Fed. 143.

15.——Trustee's Sale.—The Bankruptcy Act of 1898 places no restriction on the trustee's sale of real property at public auction, and requires no order of the court therefor.—In re La France Copper Co., U. S. D. C., 205 Fed. 297.

16.——Venue.—Where a bankrupt firm did business in Boston, in Suffolk county, and two of its members resided in two other counties, the bankruptcy proceeding could properly be referred to a referee in either county.—In re Watkinson, C. C. A., 205 Fed. 145.

17. **Banks and Banking**—False Report.—In a prosecution of a cashier fo a state bank for making a false report, it is no defense that he signed the report at the request of a superior

officer without knowledge or investigation as to its truth.—State v. Cutts, Idaho, 133 Pac. 115.

18.——Regulation.—The quasi public nature of the banking business, and the intimate relation which it bears to the fiscal affairs of the people and the revenues of the state, bring it within the police power and make it a proper subject for legislative control.—United States Fidelity & Guaranty Co. v. Poetker, Ind., 102 N. E. 872.

19. **Bills and Notes**—Assumption of Mortgage.—Where the owner of land subject to a mortgage required a purchaser to assume payment thereof, and the purchaser took an assignment of the note before it was due, and subsequently reissued it, the owner is liable for payment.—Judy v. Warne, Ind., 102 N. E. 386.

20.——Holder in Due Course.—The right of the transferee of a check taken without notice of any fraud in its inception was not affected by any subsequent transactions between the maker and the payee rescinding the contract of exchange in which the check was given.—First Nat. Bank of Crookston, Minn., v. Osborn, Iowa, 142 N. W. 209.

21.——Intoxication.—Under Negotiable Instruments Law, declaring that a holder in due course holds free from any defect of title of prior parties, except where the title of the payee is void on the ground of fraud, duress, or other unlawful means, a holder in due course takes no title where the note was void in its inception because of the intoxication of the maker.—Green v. Gunsten, Wis., 142 N. W. 261.

22.——Negotiability.—A note executed to a bank by its directors, reciting that it is given to make up a shortage of the cashier, and that on recovery of any of the missing assets the makers shall be paid the cash value thereof in proportion to the amount which each may pay or be liable for, is non-negotiable.—Exchange Nat. Bank v. Chapline, Ark., 158 S. W. 151.

23.——Notice.—A statement made to the president of a bank which discounted a note before maturity, that the payee was engaged in selling worthless mining stock, and advising the president not to discount the note, was a mere expression of opinion, insufficient to bring knowledge to the bank of the worthless character of the note.—McMillan v. First Nat. Bank, Ga., 7 S. E. 734.

24.——Notice.—A transferee of notes who has notice of the equities against the transferror by reason of his fraud is not a holder in due course.—Fournier v. Cornish, Wash., 133 Pac. 9.

25.——Novation.—Where the holders of notes agreed with the makers to accept land in lieu of payment, there was a complete novation, and a purchaser of the notes after maturity, without knowledge of the novation, is bound thereby, and cannot enforce payment according to the tenor of the instruments.—Cooney v. Dandridge, Tex., 158 S. W. 178.

26. **Carriers of Goods**—Released Valuation.—Where there is no agreed valuation and the bill of lading accepted and signed by the shipper without fraud on the carrier's part contains a released valuation, and where subsequently the shipper pays the freight based on the released valuation, no recovery can be had for loss beyond that authorized by the published rates.—M. K. & T. Ry. Co. v. Walston, Okla., 133 Pac. 42.

27. **Carriers of Passengers**—Protection.—The failure of a passenger conductor to prevent a white city marshal from entering a negro coach does not render the carrier liable for the death of a negro in the coach, killed by the marshal, unless the conductor could have reasonably anticipated that as a result of his failure decedent or some passenger in the coach, would likely be killed or suffer injury.—Missouri, K. & T. Ry. Co. of Texas v. Brown, Tex., 158 S. W. 259.

28. **Charities**—Cy Pres.—Testatrix gave her residence for an Old Folks' Home with funds for support, but the property was not suitable nor the entire estate sufficient for that purpose, yet, since the will disclosed a general charitable intent to help such dependent class, and no intent that the trust should fail if not carried out in the way designated, nor to limit it to any particular locality, the establishment of the home being incidental to the main object, the funds should be administered according to the doctrine of cy pres.—Norris v. Loomis, Mass., 102 N. E. 419.

29. **Chattel Mortgages**—"Appurtenances."—A chattel mortgage upon a grain elevator, together with weights, scales, and appurtenances will not include a roll-top desk kept in the office, the term "appurtenances" applying only to machinery necessary to the operation of the elevator.—Dixson v. Ladd, S. D., 142 N. W. 259.

30.——Illegal Sale.—Where the mortgagee of chattels agreed to their sale with an understanding that the proceeds should be delivered to him, the lien is waived, and the mortgagor, although failing to deliver the proceeds, is not criminally liable for wrongful disposition of the mortgaged property.—Lawhorn v. State, Ark., 158 S. W. 113.

31.——Junior Mortgage.—It is essential to the right of a junior mortgagee to foreclose, where a senior mortgagee is rightfully in possession, that he either redeem from the senior mortgage or show that the property is sufficient in value to satisfy the senior mortgagee and leave a surplus to be applied upon the junior mortgage.—Tiedt v. Boyce, Minn., 142 N. W. 195.

32. **Contracts**—Benefit of Third Person.—Where a debtor makes a valid contract with a third person to pay his debt, the creditor may sue on the contract and enforce it by an action in his own name.—Oregon Mill & Grain Co. v. Kirkpatrick, Ore., 133 Pac. 69.

33.——Rescission.—The right to rescind a contract for fraud cannot be predicated on a misrepresentation involved in the breach of a promise as to a future performance, though the promisor intended at the time of the making of the promise not to keep it.—Missouri Loan & Investment Co. v. Federal Trust Co. of St. Louis, Mo., 158 S. W. 111.

34.——Time of Essence.—Time will be presumed to be of the essence of a contract when it is known by both parties at the time it is entered into that, without a strict performance in that respect, the contract will not accomplish its ultimate object.—Ottumwa Bridge Co. v. Corrigan, Mo., 158 S. W. 39.

35. **Corporations**—Directors.—Where the directors of a corporation voted themselves unlawful, extravagant, improper, and fraudulent salaries, seeking to obtain an unfair advantage over their fellow stockholders, they may be compelled to account for the profits or moneys so

taken.—A. & M. Robbins v. Hill, 142 N. Y. Supp. 637.

36.——Illegal Organization.—The liability of persons organizing a corporation and transacting business in its name before the minimum capital stock has been subscribed is to the creditors, and is not an asset, so that the receiver of the corporation could not sue such persons to collect from them as an asset of the corporation.—Wells v. Du Bose, Ga., 78 S. E. 715.

37.——Preferring Creditor.—A corporation in failing circumstances may prefer one creditor to another, provided the preference is made in good faith, while the property of the corporation remains in its possession unaffected by liens or process of law.—Graham Paper Co. v. Sheridan Pub. Co., Mo., 15 S. W. 92.

38.——Subscription.—One induced by fraud to subscribe for stock, who gives notice of his rescission to the officers of the corporation, need not resort to equity to annul the subscription, but he can wait until the corporation or its receiver sues to enforce the subscription, and then rely on the fraud.—Johns v. Coffee, Wash., 133 Pac. 4.

39. **Covenants.**—A general covenant of warranty in a deed is breached by an outstanding lease.—Bass v. Starnes, Ark., 158 S. W. 136.

40. **Criminal Evidence**—Expert Testimony.—Expert evidence in cases where the border line between general and expert knowledge is close is not conclusive, but upon questions involving a highly specialized art, with reference to which a layman can have no knowledge at all, the court and jury must depend on such evidence.—Flege v. State, Neb., 142 N. W. 276.

41. **Criminal Law**—Accessory.—The conviction of a principal is prima facie evidence of his guilt on the trial of an accessory before the fact, but the record of such conviction does not exclude other competent evidence of the principal's guilt or prevent the dispute of such record collaterally on the issue of the accessory's guilt.—Jones v. State, Ark., 158 S. W. 132.

42.——Former Jeopardy.—To sustain a plea of former jeopardy, the defendant must prove that the acts which constitute the offense for which the former conviction was had are the very acts constituting the offense for which he is now on trial.—Creech v. State, Tex., 158 S. W. 277.

43.——Impeaching Verdict.—A verdict cannot be impeached by affidavits of the jurors as to how they understood an instruction.—State v. Teale, Iowa, 142 N. W. 235.

44. **Damages**—Riparian Rights.—The city of Portland cannot construct a public wharf below the ordinary high-water line of riparian lots without compensating the owners thereof for their wharfage right thereby taken.—Pacific Milling & Elevator Co. v. City of Portland, Ore., 133 Pac. 72.

45.——Tort-feasors.—A tort-feasor is answerable for all damages directly traceable to the wrong done and arising therefrom without an intervening agency, and without the fault of the person injured.—Carson v. Ft. Smith Light & Traction Co., Ark., 158 S. W. 129.

46. **Death**—Instantaneous.—Where the death of one by wrongful act was instantaneous and painless, there could be no recovery for pain and suffering.—Burch v. St. Louis, I. M. & S. Ry. Co., Ark., 158 S. W. 139.

47. **Deeds**—Description.—A deed purporting to convey "153⅓ acres off of lot of land No. 42" was void for indefiniteness of description.—James v. Hamil, Ga., 78 S. E. 721.

48.——Heirs.—In the case of a limitation of a life estate with remainder to the heirs of another who is still living, if the context shows that the word "heirs" was used in a popular and not a technical sense, those answering that description take the remainder as a vested estate.—Heady v. Hollman, Mo., 158 S. W. 19.

49. **Dismissal and Non-Suit**—Counterclaim.—Where plaintiff in ejectment dismisses his cause of action after defendant has filed a counterclaim claiming an interest in the land and asking affirmative relief, defendant has a right to proceed to trial upon such counterclaim.—Long v. Bagwell, Okla., 133 Pac. 50.

50. **Divorce**—Community Property.—Where a wife obtained a divorce and the court found that certain real estate in her name was accumulated by the joint efforts of the parties during marriage, it was proper to adjudge that plaintiff should pay defendant for his equity therein and that the title should be quieted in her.—Gleeson v. Gleeson, Neb., 142 N. W. 292.

51.——Cruelty.—Unjustifiable acts causing the other spouse to endure such suffering and distress as to wholly destroy peace of mind and render life unendurable held to justify a divorce on the ground of cruelty without physical acts of cruelty.—Dickinson v. Dickinson, Ind., 102 N. E. 398.

52. **Escrows**—Performance of Condition.—Where a check for the earnest money was deposited in a bank with the contract for the sale of land, it became payable when the contract went into effect.—Monarch Portland Cement Co. v. Washburn, Kan., 133 Pac. 156.

53. **Evidence**—Non-Expert Witness.—A non-expert witness may testify as to the consciousness or unconsciousness of a person.—Watson v. Newell, 142 N. Y. Supp. 653.

54.——Presumption.—The condition of bankruptcy is presumed to continue, in absence of a contrary showing, after its existence has been established.—Lewis v. Michigan Stove Co., Ind., 102 N. E. 391.

55. **Exchange of Property**—Rescission.—A delay of six months does not amount to a waiver of right to rescind a contract for the exchange of real property, invalid for undue influence on a weak-minded woman, where it does not appear her condition had improved or that she realized that she had been wronged.—Krueger v. Buel, Wis., 142 N. W. 264.

56. **Executors and Administrators**—Gratuitous Services.—The law presumes that services by one member of a family for another were rendered gratuitously.—Hyde v. Honiter, Mo., 158 S. W. 83.

57. **Exemptions**—Evasion of Statute.—Under Burns' Ann. St. 1908, § 2669, imposing a fine upon one who assigns a claim for the purpose of having it collected by attachment or garnishment outside of the state, a debtor whose wages, exempt within the state, are garnisheed upon a claim assigned in violation of the statute has a right of action against the assignor.—Markley v. Murphy, Ind., 102 N. E. 376.

58. **Fraud**—Innocent Parties.—Where one of two innocent parties must suffer by the misconduct of a third person, the one who made the condition possible should bear the burden.—Judy v. Warne, Ind., 102 N. E. 386.

59.——Negligence.—Where a party was guilty of a positive, willful fraud inducing the adverse party to act thereon and execute an instrument, the fact that the adverse party was guilty of negligence in executing the paper without further inquiry as to its contents did not deprive him of the right to sue for fraud.—Muller v. Rosenblath, 142 N. Y. Supp. 602.

60. **Fraudulent Conveyances**—Deficiency Judgment.—In an action to set aside a conveyance as fraudulent upon plaintiff, a judgment creditor, it is not proper to render a personal judgment against the grantee for any deficiency which might remain after the lands in question were subjected to the grantor's debts.—Louder v. Hunter, S. D., 142 N. W. 251.

61. **Garnishment**—Assignment by Check.—Under Negotiable Instruments Law, § 188, providing a check does not operate as an assignment of any part of the funds to the credit of the drawer, and the bank is no liable to the holder until it accepts or certifies the check, the holder of a check who in good faith has paid the maker in full for it is entitled to so much of the deposit as is required to pay the check as against an attaching creditor of the maker.—Farrington v. P. E. Fleming Commission Co., Neb., 142 N. W. 297.

62. **Highways**—Special Assessments.—An assessment may be made against property benefited by the improvement of a highway outside of an incorporated city or a town, although it does not front upon such highway.—McCray v. Manning, Cal., 133 Pac. 17.

63. **Husband and Wife**—Injury to Wife.—In a husband's action for loss of his wife's services due to personal injuries, he may recover for his own services in nursing and caring for the wife where it is shown that he devoted time thereto to the exclusion of his business or employment, whereby he suffered an actual and pecuniary loss.—Bruce v. United Rys. Co. of St. Louis, Mo., 158 S. W. 102.

64.—Loss of Consortium.—Where the husband was injured and incapacitated by his employer's negligence held that the wife had no action for loss of consortium; the loss of the society, companionship, aid, and support of her husband during the time he was so incapacitated.—Gambino v. Manufacturers' Coal & Coke Co., Mo., 158 S. W. 77.

5.——Separate Estate.—The duty of a husband to support his wife exists though she has a separate estate and though she may have been unchaste before the marriage.—State v. Hill, Iowa, 142 N. W. 231.

66. **Injunction**—Nuisance.—Where the commissioners of highways construct a culvert with such an insufficient opening that surface water is thrown upon the land of an abutting owner to his repeated damage, the commissioners, on proper notice, must abate the nuisance and on failure will be required to do so by injunction.—Murphy v. Fairmount Tp., Kan., 133 Pac. 169.

67. **Insurance**—Proximate Cause.—In an action on an accident in policy providing that the insurer's liability should be one-fifth of the amount otherwise payable if injury resulted from intentional act, recovery was limited to the one-fifth, where insured was intentionally struck a slight blow without intent to kill, and fell, striking his head on the pavement and fatally fracturing his skull.—Ryan v. Continental Casualty Co., Neb., 142 N. W. 288.

68.——Waiver.—Where an insurance company accepted a note taken by an agent for a portion of a premium and made efforts to collect the note, it waived any right to forfeit the policy under a provision in the note that its non-payment at maturity should ipso facto avoid the policy, and a stipulation in the policy that agents of the insurer should have no authority to waive the forfeiture.—Fidelity Mut. Life Ins. Co. v. Goza, Ga., 78 S. E. 735.

69. **Judgment**—Collateral Attack.—A void judgment may be collaterally attacked.—Long v. Tighe, Nev., 133 Pac. 60.

70. **Libel and Slander**—Privilege.—The privilege granted to publications which announce the intentions of government officers is limited to that class of officers and to questions about which it is to the instruction and advantage of the public to be informed.—Hagener v. Pulitzer Pub. Co., Mo., 158 S. W. 54.

71. **Limitation of Actions**—Suspension.—Where limitations against the recovery of real property commenced running in a person's lifetime, the running of the statute was not suspended after his death during the infancy of such person's heir.—Fore v. Berry, S. C., 78 S. E. 706.

72. **Malicious Prosecution**—Acquittal.—The fact of acquittal affords no presumption that defendant did not have probable cause to institute the prosecution.—Hanowitz v. Great Northern Ry. Co., Minn., 142 N. W. 196.

73.——Burden of Proof.—In an action for malicious prosecution, malice and want of probable cause must both be provyen as distinct issues.—Hanowitz v. Great Northern Ry. Co., Minn., 142 N. W. 196.

74. **Master and Servant**—Assumption of Risk.—A servant does not assume the risk of unknown dangers due to the master's negligence.—Perry v. Ohio Valley Electric Ry. Co., W. Va., 78 S. E. 692.

75.——Concurrent Negligence.—Where the negligent failure of an employer to guard a saw concurred directly with the act of a coemployee in producing injury to an employee, the negligence of the employer was the proximate cause.—Marietta Glass Mfg. Co. v. Pruitt, Ind., 102 N. E. 369.

76.——Fellow-Servant.—An employee assumes the risk of injury from the negligence of a fellow-servant.—Subbo v. Pacific Coast Const. Co., Ore., 133 Pac. 83.

77.——Last Clear Chance.—An employee in switchyards who is familiar with the situation must look out for himself, and trainmen seeing him in a place of danger may assume that he will avoid the danger, and the humanitarian doctrine can only be invoked from the time the trainmen see that he will not protect himself.—Gabel v. St. Louis & S. F. R. Co., Mo., 158 S. W. 12.

78.——Master's Assurance.—Where an employee complains to a master that he is afraid to work with his fellow-servant, and the master admits that such fellow-servant is incompetent and that he will place him at other work, the one complaining may continue at work for a reasonable time without assuming the risk of his fellow-servant's negligence.—Delmore v. Kansas City Hardwood Flooring Co., Kan., 133 Pac. 151.

79.——Vice-Principal.—The act of a foreman in ordering an employee to drill in a hole containing unexploded dynamite is the act of a vice principal, and the employer is liable for the foreman's negligence, though in loading and firing shots the foreman and employee worked together as fellow-servants.—Britt v. Crebo, Mo., 158 S. W. 65.

80. **Mechanics' Liens**—Homestead.—A contractor is not entitled to a mechanic's lien against a homestead for the balance due for repairs made thereon.—Hollister v. Sweet, S. D., 142 N. W. 255.

81.——Materialman.—Where lumber is delivered to premises, and so far as known is not used elsewhere, and all that is purchased is used in a building erected on the premises, the materialman is entitled to a lien.—Moon v. Brown, Mo., 158 S. W. 79.

82. **Mortgages**—Sale.—Where a deed of trust made it the duty of the trustee to sell on the debtor's default at the request of the beneficiary, it did not limit such request to the particular beneficiary named in the deed, but authorized a sale at the request of the owner of the debt.—Todd v. Bemis, Tex., 158 S. W. 182.

83. **Municipal Corporations**—Injunction.—Where the officers of a city designedly and capriciously attempt to open and construct streets so as to place burdens on a property owner which he cannot in good conscience be required to bear, he may secure relief by timely application to a court of equity.—Granite Bituminous Paving Co. v. Fleming, Mo., 158 S. W. 4.

84. **Negligence**—Husband and Wife.—Where a wife, whose husband was ill, promised a nurse to maintain a light at a certain point on the husband's premises to enable the nurse to move about the upper hall in safety, and failed to perform the undertaking, she is liable to the nurse for injuries caused by the absence of the light.—McLeod v. Rawson, Mass., 102 N. E. 429.

85. **Party Walls**—Opening.—In the absence of statutory regulation or express agreement, either party may close openings or windows in a party wall while one of the lots remains vacant.—Holden v. Tidwell, Okla., 133 Pac. 54.

86. **Principal and Agent**—Ratification.—To permit a valid ratification of a contract made by another, it must purpose to be made for or in the name of the ratifying person.—O'Connor v. Camp, Tex., 158 S. W. 203.

87.——Secret Profits.—To enable a principal to recover for secret profits made by his agent in exchange of property, it must appear that the agent had knowledge of the value of the property taken unknown to his principal which the agent used to his advantage.—Davis v. Haire, Neb., 142 N. W. 303.

88. **Principal and Surety**—Surety Company.—The contracts of sureties, like other contracts, are to be construed so as to give effect to the intention of the parties, in ascertaining which the language should be read in the light of the circumstances surrounding the execution of the instrument; but, when the meaning has been thus ascertained, the responsibility of the surety is strictissimi juris, and is not to be extended or enlarged by implication or construction.—Knit Goods Exchange v. Halpern, 142 N. Y. Supp. 566.

89.——Surety Company.—The rule requiring strict construction in favor of private sureties who sign for accommodation does not apply to the contract of a surety company, but its contract is to be construed most strictly against it and in favor of the obligee.—United States Fidelity & Guaranty Co. v. Poetker, Ind., 102 N. E. 372.

90. **Railroads**—Last Clear Chance.—Where an adult struck by a train looked towards it and then walked rapidly on the track, and the trainmen had no knowledge of any defect in her eyesight or hearing, the humanitarian doctrine was inapplicable.—Reeves v. Kansas City, St. L. & C. R. Co., Mo., 158 S. W. 2.

91.——Licensees.—Where there is an established user of a railroad track by pedestrians, which user is known to the company, it must exercise care for pedestrians.—Feldman v. St. Louis, I. M. & S. Ry. Co., Mo., 158 S. W. 88.

92.——Signals.—It was a duty of trainmen to give the statutory signals by bell and whistle at a point on the right of way which was customarily used by pedestrians as a footpath or crossing to the company's knowledge.—Galveston, H. & S. A. Ry. Co. v. Huegle, Tex., 158 S. W. 197.

93. **Receivers**—Action by.—An action by the receiver of a company on a debt due it must be brought in its name, unless it has been assigned to him, and the law of the forum allows him to sue in his own name as assignee.—Rochester Tumbler Works v. Mitchell Woodbury Co., Mass., 102 N. E. 438.

94. **Replevin**—Burden of Proof.—A plaintiff in replevin must recover on his own title, and defendant, though not the owner, if in possession, is entitled to judgment where plaintiff has no title.—Dixson v. Ladd, S. D., 142 N. W. 259.

95. **Sales**—Breach of Warranty.—A buyer may sue for breach of warranty, though the purchase price notes are unpaid.—Skoog v. Mayer Bros. Co., Minn., 142 N. W. 193.

96.——Waiver.—The purchaser of an automobile, by keeping and using it after he knew that its defects could or would not be cured by the seller, waived his right to rescind the contract because of such defects, leaving as his only remedy an action for damages.—Houston Motor Car Co. v. Brashear, Tex., 158 S. W. 233.

97.——Warranty.—While intent to warrant is essential to a warranty, a positive assertion or representation intended to induce a purchase and which does induce the buyer to purchase relying thereon raises a conclusive presumption of such an intent.—Ellis v. Barkley, Iowa, 142 N. W. 203.

98. **Trusts**—Spendthrift.—The validity of a spendthrift trust depends upon whether it was created by the cestui out of his own property, or by another out of property in which the cestui had at the creation of the trust no interest, and in which he acquired only the strictly limited one created by the trust instrument, in which latter case the trust is valid.—Hale v Bowler, Mass., 102 N. E. 415.

99.——Termination.—A trust created solely to protect the estate of a married woman from her husband during coverture terminated when the parties were divorced.—McNeer v. Patrick, Neb., 142 N. W. 283.

100. **Vendor and Purchaser**—Place of Payment.—One who offers to sell real estate at a certain price has the right to have the payment made to her at her place of abode.—Cram v. Long, Wis., 142 N. W. 267.

101.——Quit Claim.—The grantee in a quit-claim deed may be entitled to the protection afforded a bona fide purchaser.—Sullenger v. Baecher, Ind., 102 N. E. 380.

102.——Rescission.—The possibility of the birth of another child who would share as remainderman in the property does not entitle a purchaser to rescind, where he expressly contracted to assume that risk at the time of the conveyance.—Heady v. Hollman, Mo., 158 S. W. 19.

103.——Void Judgment.—There can be no innocent purchaser for value under a judgment which shows on its face that it is void.—Pearce v. Heyman, Tex., 158 S. W. 242.

104. **Waters and Water Courses**—Beneficial Use.—The appropriation of water for use in maintaining a summer resort with its accessories, such as waterworks, lakes, fountains and park, held for a beneficial use, under the Constitution and laws of Colorado, and to take priority over a subsequent appropriation sought for manufacturing purposes.—Empire Water & Power Co. v. Cascade Town Co., C. C. A., 205 Fed. 123.

105.——Rates.—A customer of a public service water supply company has a right to reasonable rates for water independent of any contract between the company and the city for the benefit of its inhabitants.—Wood v. New York Interurban Water Co., 142 N. Y. Supp. 626.

106. **Wills**—Shelley's Case.—Will construed, and held that the daughter of testatrix took a fee in the realty constituting a part of the estate under the rule in Shelly's Case and Act of April 27, 1885 (P. L. 368).—Cook v. Quincy United Brethren Orphanage and Home, Pa., 87 Atl. 302.